

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF LAURA BRUMBAUGH

Laura Brumbaugh, being first duly cautioned and sworn, states as follows:

1. My name is Laura Brumbaugh. I am the daughter of John E. Davis, who is one of the inventors and the owner of U.S. Patent No. 6,603,052.
2. In 2003, I was just coming out of the time I had taken off for childbirth, and I started to take back over the management of my company, Newport Converting, and its parent company, Blue Horizon, Inc. Around that time, in May, 2003, my father asked, and actually required, that I assist him with his business and personal financial affairs. At the time, due to his previous stroke and health condition, he was unable to maintain his business and personal affairs on his own. Although my father moved in with my brother on Maple Avenue in Newport, Kentucky after the failure of his startup company, Tollamco, Corp., we had all of his mail sent to my home address so I could efficiently manage all of his incoming bills and important documents.

3. I received the original Patent Certificate for U.S. Patent No. 6,603,052 at my home address of 223 Congress Street, New Richmond, Ohio 45157 in early August, 2003.

4. Upon reading the cover letter, I filed the '052 Patent away in a permanent file at Blue Horizon, Inc. The letter indicated that we were to keep the original patent in a safe location, and that maintenance fees were due in intervals of 3½, 7½ , and 11½ years. The letter from our lawyer stated that we would be notified by their office on or about the 3<sup>rd</sup>, 7<sup>th</sup>, and 11<sup>th</sup> anniversaries of the need to pay maintenance fees (Exhibit D of original Summe Declaration).

5. I alerted my father, John E. Davis, that we had received the '052 Patent, and that it had been filed away for him to review when he was ready; however, since he was struggling to remember basic everyday things at that time, it is likely he did not remember the conversation by the next day. I also had him sign the signature card along with several checks for bills that needed to be paid. It was customary for me to hand him a pile of things to be signed, and at this time, I would also address any issues or things I had questions with. It would have been then that I mentioned the receipt of the '052 Patent and its location.

6. I was handling all important affairs for my father at that August, 2003 time due to his incapacitation. I was also responsible for keeping track of any important dates associated with the affairs of my father in the August, 2003 time frame. My procedures for bill receipt and payment included the daily receipt and recording of the bills received for the day. I paid the bills once a week so that it was more efficient.

7. Any important dates, meetings, or calls to be made were placed as a reminder in my ACT database. The ACT database on my computer was a phone directory of all my contacts, as well as a calendar system through which I recorded just about everything I needed to do each day. It has been a very reliable system for me to manage dates, reminders, and other important business affairs.

8. On behalf of my father, I made a reminder note in my ACT database for some time in August of 2006 to remind me, and thus remind him, of the upcoming maintenance fees for the '052 Patent. It is customary for me to enter reminders of this nature to show on my calendar several weeks before they are actually due with the intention that, if they need extra attention, I will have time to do what is necessary without being late. Having had no prior experience with a patent, I am confident that I would have also given myself several weeks "heads-up time" with my reminder in the ACT database. I also entered other dates for my father's affairs, including billing issues and dates. For those purposes, in the noted 2003 time frame, my calendar system was also my father's calendar system.

9. Upon entering the reminder note for the August, 2006 into my ACT database along with the letter from Wood, Herron, & Evans, I was confident in the system I had made for my father that I had two safeguards to fall back on with regard to the patent renewal and maintenance fees. I was confident that the patent would be renewed at the appropriate time with no issue. With so many important things needing my attention, it is still imperative that I make notes in my

calendar to remind me of important dates. The '052 Patent maintenance issue would have been no exception. If I do not have these visual cues, it is not unusual for me to forget to do something.

10. Unfortunately, shortly thereafter, in November, 2003, the hard drive of my main computer crashed. This was the computer that maintained the ACT database and all my contacts and calendar information. That crash was detrimental to my personal and business life. We were able to recover some of the data files. However, due to the sheer volume of information stored in my ACT database, there was no way of ensuring that all of the information was fully restored when we installed a new hard drive and reloaded my ACT database software onto it.

11. Some reminders and events were lost by that crash. Upon using the database over the next year or so, this fact became apparent when my usual reminders for birthdays and other similar and well-known long-term events that take place only once a year were noticed to be missing. While I could recognize lost data for well-known dates, I had no way of knowing about other lost data or lost calendared events there were.

12. I did not receive any reminder through my database in August of 2006 with respect to the patent maintenance for the '052 Patent. If I had, I could have alerted my father, John E. Davis, to the issue. I did not receive a reminder prior to that date, nor did I receive any reminder through my database system up to the discovery of the original patent and letter in the archived files by my father, John E. Davis in 2009.

13. Accordingly, while I had set up a system to track the maintenance file data on behalf of John E. Davis, my tracking of that date for payment of maintenance fees failed. This loss was unbeknownst to me, because such a date would not have been a common date or a well-known date that I would have remembered and could check on, and it would have occurred as a reminder three years after it had been originally entered.

14. I relied upon my database to remember and track the things I simply cannot remember on my own due to the workload of running two companies and also managing a family of five. At the time, I was also managing my father's affairs, including his financial affairs and business affairs, including handling the patent matters at that time.

15. The ACT database has been a reliable database for me to use to address such important dates and matters. This was why the ACT database was chosen as the mode for tracking the deadline to pay maintenance fees associated with the '052 Patent. The hard drive crash was a mechanical problem, and was not a failure of the ACT database software. Therefore, the software provided a reliable system for tracking important dates.

16. I was careful to make sure that important dates associated with my father's business and financial affairs were entered into my personal database. That is, for such matters, my ACT database became my father's database. Therefore, my use of the ACT database for the patent maintenance fee tracking and reminders is, in effect, my father's database, as he was incapacitated.

17. Mr. Davis would not have been aware of the ACT tracking system that I had put in place. Therefore, he would have believed, through that lack of knowledge, that there was no docketing system in place to track the maintenance fee due dates. However, there was. Pursuant to recent further discussions with my father that revolve around the issue of payment of the maintenance fees after their original due date, I was able to recall for him the steps that were taken, on his behalf, with respect to tracking the maintenance fee due dates for the patent.

18. Because of the hard drive failure in my ACT database and calendar system and the loss of data, including the patent maintenance fee reminder entry, as well as other important date reminders, I was unable to alert my father with respect to the maintenance fees for the '052 Patent. Because my father did not have any original knowledge of having seen or read the original '052 Patent nor the letter from Wood, Herron & Evans, he was also not able to realize that the tracking system that he was using, through me, had lost data and failed to provide a reminder about the maintenance fee for the '052 Patent.

19. Although my personal safeguard had failed in regard to the patent renewal, there was still the letter from the patent lawyer that a reminder notice would be sent to us regarding the renewal of the patent. Even though the original patent was sent to and received at my home address, I never received a reminder notice of the maintenance fees.

20. I was not involved in the patent process, nor am I well-versed in patent law. It is for these reasons that I believe the circumstances regarding the non-renewal of my father's patent were unavoidable.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.

11/18/10  
Date

  
Laura Brumbaugh

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